



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 17, 2022

IN THE MATTER OF:

Appeal Board No. 623004

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board No. 623004, the Commissioner of Labor appeals from the decision of the Administrative Law Judge filed April 8, 2022, which overruled the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits.

In Appeal Board Nos. 623041, 623042 and 623043, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed April 8, 2022, which overruled the initial determinations disqualifying the claimant from receiving benefits, effective March 29, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$7,176 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$11,100 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$4,416 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$1076.40 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623044, 623045 and 623046, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed April 8,

2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective beginning March 29, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$7,176 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$11,100 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$4,416 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 80 effective days and charging a civil penalty of \$1076.40 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the consecutive and combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by and on behalf of the claimant and the Commissioner of Labor.

The Board considered the arguments contained in the written statements submitted on behalf of the claimant and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a Youth Development Counselor in a group home for children from July 2019 until March 28, 2020. The claimant was a per diem, on call worker. Her job required that she work hands-on with the children in her care. On March 28, 2020, the claimant began to feel sick. She notified her supervisor on March 29, 2020, that she couldn't work that day. She was next scheduled to work on April 3, 2020. On that date she contacted her doctor, who told her to isolate for two weeks. This was pre-COVID testing. After two weeks she again contacted her supervisor and reported that she still wasn't feeling well. She was taken off the schedule and told that she needed a doctor's clearance if she wanted to return to work. She applied for personal leave and FMLA, and was denied.

Though her doctor released her to return to work on May 14, 2020, the claimant

still had chest pains, gastric problems, and fatigue. She couldn't leave her house. Her doctor sent her to medical specialists for testing due to her symptoms. Since the claimant worked directly with children, and the employer did not provide staff with sufficient personal protective equipment (PPE) she did not return to work.

The claimant filed a claim for benefits on May 18, 2020, which was backdated to March 29, 2020. The claimant spoke directly with a Department of Labor (DOL) representative, and she explained at that time that she was unable to work due to illness. The representative told the claimant to file anyway, and to continue to certify for benefits. The claimant was mailed a copy of the Information Handbook. When the claimant certified for benefits, she indicated that she was ready, willing and able to work. The claimant received the benefits at issue.

She again spoke to a DOL representative on December 30, 2020. She told the representative that she was still sick and unable to work outside of her home. Her work history had been hands on with clients. Her employer had no remote work. She admitted that she had certified to being ready, willing and able to work so that she could be eligible for benefits and that she made a mistake.

The claimant filed a claim for PUA benefits on December 31, 2020.

The claimant finally felt able to work in Spring 2021. She was working as of September 2021.

OPINION: The credible evidence establishes that the claimant left her employment on March 29, 2020, due to illness. Though the claimant was not tested at that time for COVID-19, since it was still early days in the pandemic and testing was not readily available, her symptoms were that of the virus and her doctor quarantined her for two weeks. We credit that she was still suffering symptoms after those two weeks ended and was unable to return to a job which required her to work hands-on with children and the employer did not have sufficient PPE.

Her contention of continued sickness, past the two-week period and beyond, is supported by her doctor's action of referring her to various specialists including a cardiologist and gastroenterologist. The claimant took steps to protect her employment when she initially went out by requesting several types of leave, which were denied. Given the length of time the claimant continued

to experience symptoms, we conclude that the claimant's quit was with good cause and that she is not disqualified from benefits. Therefore, the claimant was entitled to the benefits she received related to the voluntary leaving determination. Additionally, as the claimant informed a DOL representative at the time she filed her claim for benefits, on May 18, 2020, that she was not working due to illness, her representation was truthful and there are no penalties imposed for a willful misrepresentation associated with the voluntary separation determination.

However, as the claimant separated from her employment due to illness, and admittedly wasn't able to return to work until Spring 2021, we conclude that that the claimant was ineligible to receive benefits because she was not available to work March 29, 2020, until Spring 2021, or April 8, 2021. We have considered the claimant's argument that she could work remotely and note that the claimant's work history requires her to work hands-on with clients which she could not do, due to illness. There is no evidence that the claimant has any experience working remotely. The employer had no remote work available.

With respect to the overpayment of federal benefits, as the claimant is not eligible to receive benefits from April 8, 2020, until April 8, 2021, we conclude that the federal benefits she received during this period are recoverable.

With respect to the claimant's contention that she was advised by the DOL representative to file and certify for benefits during this period, and her further contention that she made a mistake, neither contention excuses the claimant's failure to advise the DOL that she was not ready, willing or able to work. The claimant knew she was sick and continued to be sick and unable to work until Spring 2021. The claimant also admits that she knew that if she answered any other way, she would not be eligible for benefits and therefore had an incentive not to be forthcoming. The claimant received a copy of the Handbook which she was required to read as she was held responsible for the contents therein. Further, the question asked of her was simple and straightforward and she was expected to answer the question honestly, which she failed to do. We therefore conclude that the claimant made willfully false statements to receive benefits and that both the civil and monetary penalties were properly imposed. Additionally, as the claimant was not eligible for benefits, the regular benefits she received are an overpayment. As she made both willfully, and factually false statements to receive those benefits, they are recoverable.

As to her eligibility for PUA benefits, PUA benefits are only available for those who are not able to establish a valid original claim for UI benefits (see, CARES Act § 2102 (a) (3) and US Department of Labor Unemployment

Insurance Program Letter No. 16-20). The claimant is held entitled to receive benefits as her quit was with good cause. However, the ability to establish a claim for benefits is an issue separate and apart from a claimant's ability to maintain eligibility to receive benefits. Accordingly, we conclude that as the claimant was able to establish a claim for UI benefits, she would not have been entitled to receive PUA benefits, regardless of whether the claimant was not eligible due to her lack of availability.

DECISION: In Appeal Board No. 623004, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 623004, the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, is sustained.

In Appeal Board Nos. 623041, 623042 and 623043, the decision of the Administrative Law Judge is affirmed.

In Appeal Board Nos. 623041, 623042 and 623043, the initial determinations disqualifying the claimant from receiving benefits, effective March 29, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$7,176 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$11,100 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$4,416 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$1076.40 on the basis that the claimant made willful misrepresentations to obtain benefits, are overruled.

In Appeal Board Nos. 623044, 623045 and 623046, the decision of the Administrative Law Judge is reversed.

In Appeal Board Nos. 623044, 623045 and 623046, the initial determinations holding the claimant ineligible to receive benefits, effective beginning March 29, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$7,176 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of

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The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER